

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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| TERENCE POLETTI, <i>et al.</i> , | : | |
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| Plaintiffs, | : | |
| | : | 21-CV-7603 (VSB) |
| - against - | : | |
| | : | <u>OPINION & ORDER</u> |
| PEPSI-COLA BOTTLING COMPANY OF | : | |
| NEW YORK, INC., <i>et al.</i> , | : | |
| | : | |
| Defendants. | : | |
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Appearances:

Clifford Ryan Tucker
Geoffrey Kalender
Patricia Rose Lynch
Sacco & Fillas, LLP
Astoria, NY
Counsel for Plaintiff

Patrick G. Brady
James Joseph Sawczyn
Epstein Becker & Green, P.C.
Newark, NJ
Counsel for Defendants

VERNON S. BRODERICK, United States District Judge:

On January 29, 2024, Plaintiff George Murn passed away. (Doc. 121-1 ¶ 4.) Natalie Blue Murn, in her capacity as Administrator CTA of the Estate of George Murn, moved to substitute herself as a party and filed a notice of voluntary dismissal under Rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure. (Doc. 121.) This motion was referred to Magistrate Judge Robert W. Lehrburger. (Doc. 122.) On December 12, 2024, Judge Lehrburger granted Natalie Blue Murn's unopposed motion to substitute. (Doc. 128.) On December 18, 2024, Judge

Lehrburger held a hearing on the issue of the notice of voluntary dismissal. (*See* Doc. 129.) That same day, Judge Lehrburger issued a 3-page Report and Recommendation to dismiss without prejudice the claims of Plaintiff Natalie Blue Murn, as Administrator CTA of the Estate of George Murn. (Doc. 133.) The Report and Recommendation noted that although this is a FLSA case, no review or approval under *Cheeks v. Freeport Pancake House, Inc.*, 796 F.3d 199 (2d Cir. 2015) is required because “there is no settlement agreement and none is contemplated.” (*Id.* at 2.) Further, the Report and Recommendation explicitly stated that “the parties shall have fourteen (14) days to file written objections to this Report and Recommendation.” (*Id.* at 3.) No party has submitted any objections to the Report and Recommendation although more than fourteen days have passed since that date.

A district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). “To accept the report and recommendation of a magistrate, to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record.” *Nelson v. Smith*, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985).

Although the Report and Recommendation explicitly provided that “[p]ursuant to 28 U.S.C. § 636(b)(1) and Rules 72, 6(a), and 6(d) of the Federal Rules of Procedure, the parties shall have fourteen (14) days to file written objections to this Report and Recommendation,” (*id.*), no party has filed an objection or requested additional time to do so. I have reviewed Judge Lehrburger’s detailed and well-reasoned Report and Recommendation for clear error and, after careful review, find none. I therefore ADOPT the Report and Recommendation in its entirety.

For the foregoing reasons, Judge Lehrburger’s Report and Recommendation is adopted in full. The Clerk of Court is respectfully directed to dismiss Plaintiff Natalie Blue Murn and her

claims from this action.

SO ORDERED.

Dated: January 7, 2025
New York, New York

A handwritten signature in black ink, reading "Vernon Broderick". The signature is written in a cursive style with a large, stylized "V" and "B".

Vernon S. Broderick
United States District Judge